

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

PHOENIX SERVICES TOPCO, LLC, et al.,

Debtors.¹

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Chapter 11

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Case No. 22-10906 (MFW)

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(Jointly Administered)

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Re: Docket No.: 554

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**DECLARATION OF ROBERT RICHARD IN SUPPORT OF DEBTORS' MOTION FOR
ENTRY OF AN ORDER APPROVING (I) REJECTION OF EXECUTORY CONTRACTS
WITH NUCOR, (II) SETTLEMENT AGREEMENT WITH NUCOR, (III) SALE OF CERTAIN
ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES TO NUCOR,
AND (IV) STIPULATIONS WITH CERTAIN COUNTERPARTIES**

I, Robert Richard, pursuant to section 1746 of title 28 of the United States Code, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Financial Officer (“**CFO**”) of Phoenix Services Topco, LLC and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”). I submit this declaration (the “**Declaration**”) in support of the *Debtors’ Motion for Entry of an Order Approving (I) Rejection of Executory Contracts with Nucor, (II) Settlement Agreement with Nucor, (III) Sale of Certain Assets Free and Clear of Liens, Claims, and Encumbrances to Nucor, and (IV) Stipulations with Certain Counterparties* (Docket No. 554) (the “**Motion**”), filed on February 22, 2023.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Phoenix Services Topco, LLC (4517); Phoenix Services Parent, LLC (8023); Phoenix Services Holdings Corp. (1330); Phoenix Services International LLC (6493); Metal Services LLC (8793); Terracentric Materials LLC (0673); Cool Springs LLC (8687); Metal Services Investment LLC (2924); and Phoenix Receivables, LLC (not applicable). The Debtors' mailing address is 4 Radnor Corporate Center, Suite 520, 100 Matsonford Road, Radnor, Pennsylvania 19087.

2. I previously provided a declaration in support of the Debtors' chapter 11 petitions and motions seeking first day relief (Docket No. 13) (the "**First Day Declaration**").² I discussed my background in the First Day Declaration.

3. I previously also provided a declaration in support of the Debtors' request to reject contracts included in the Motion (Docket No. 397).

4. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon: (a) my personal knowledge; (b) information learned from my review of relevant documents and information concerning the Debtors, as well as the Debtors' books and records that are maintained and utilized in the ordinary course of the Debtors' business; (c) information provided to me by the Debtors' employees and/or external counsel for the matters described herein, including the Debtors' advisors; and/or (d) my opinion based upon my experience, knowledge, and information I have received and reviewed in relation to the Debtors' operations. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtors. I have reviewed the Motion. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

5. In my role as CFO of the Debtors, I believe that the Settlement Agreement and Stipulations are fair and entry into them is in the best interests of the Debtors' estates because they allow for: (a) the consensual rejection of the Nucor Contracts effective as of February 28, 2023; (b) the Debtors' orderly exit and removal of the Debtors' owned and leased equipment from the Nucor Sites following rejection (the "**Mobile Assets**"); (c) the sale to Nucor of certain non-mobile assets (the "**Non-Mobile Assets**") free and clear of liens, claims, interests, and

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the First Day Declaration or the Motion, as applicable.

encumbrances, for fair value; and (d) the Debtors' resources to be reallocated and proceeds of the sale to be deployed in ways that benefit the Debtors' estates.

6. The Settlement Agreement with Nucor also facilitates and provides funding by Nucor for additional settlements with (a) Radius Construction Co., Inc. ("Radius"), (b) Straight Edge Concrete, LLC ("Straight Edge"), (c) 36th Street Capital Partners LLC ("36th Street Capital"), and (d) Stonebriar Commercial Finance LLC ("Stonebriar" and collectively with Nucor, Radius, Straight Edge and 36th Street Capital, the "Counterparties"), which provide for the satisfaction and release of certain claims and liens against the parties and resolution of a pending adversary proceeding without additional cost to the Debtors.

7. In addition, the Settlement Agreement and the Stipulations resolve the Rejection Motions and Adversary Proceeding without further time, expense, distraction, and uncertainty of contested hearings and litigation. Both the Debtors and Nucor agree the Nucor Contracts should be rejected, and the Settlement Agreement and the Stipulations allow for the Debtors to retain and maximize the value of the Debtors' assets, removing assets of value and use to the Debtors from the Nucor Sites following rejection, and selling certain other assets for fair value. The terms of the Settlement Agreement and Stipulations are a result of good-faith, arm's-length negotiations between the parties, who were each advised by counsel.

8. Further, the Debtors have continued to communicate with their various capital lessors and equipment financers that have equipment at the Nucor Sites regarding the removal of such equipment during the course of the Wind-Down. As of the date of this Declaration, the Debtors have approval from the following capital lessors and equipment financers to remove their respective equipment from the Nucor Sites, including: 36th Street Capital Partners, LLC, De Lage Landen Financial Services, Inc, Caterpillar Financial Services Corporation,

Wintrust Commercial Finance, Peapack Capital Corporation, Encina Equipment Finance SPV, LLC, Wingspire Equipment Finance LLC f/k/a Liberty Commercial Finance LLC, Dext Capital, LLC, and First National Capital Corporation. In addition, the Debtors and Pathward, N.A., f/k/a Crestmark Equipment Finance resolved the issues raised in the limited objection filed by Pathward, N.A.

9. The Debtors have also prepared an extensive logistical plan that utilizes the Debtors' employees but also relies on third-parties to facilitate the Debtors' wind down activities at the Nucor Sites. Assets will be transported from the Nucor Sites to the Debtors' other customers' sites or other locations secured by the Debtors. The transition will require approximately five-hundred (500) large truckloads and the removal of over two-hundred fifty (250) large assets (assets requiring one or more trucks to remove), plus thousands of smaller pieces of personal property. Approval of the Settlement Agreement and the rejection of the Nucor Contracts on February 28, 2023 is important to the Debtors to prevent additional significant costs and disruption that would arise if the Debtors had to attempt to reschedule the wind down activities with third-parties required for the work.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: February 27, 2023
Radnor, Pennsylvania

/s/ Robert Richard
Name: Robert Richard
Title: Chief Financial Officer